

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

GENE A. MITCHELL §
v. § CIVIL ACTION NO. 6:09cv296
DEBBIE RUTHVEN §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Relator Gene Mitchell, proceeding *pro se*, filed this application for the writ of mandamus under 28 U.S.C. §1361 and §1651. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Mitchell asked that the Court issue the writ of mandamus against Debbie Ruthven, Warden of the Billy Moore Unit in Overton, Texas, directing that she provide him with the name of the owner or operator of the Unit. On July 22, 2009, the Magistrate Judge issued a Report recommending that the application for mandamus relief be denied because federal courts lack jurisdiction to issue writs of mandamus against state officials. Mitchell did not file objections to this Report; rather, he filed a motion asking that his mandamus application be dismissed.

The Court has reviewed Mitchell's motion and has determined that it should be granted. The Court notes that the Magistrate Judge's Report was in fact correct, but that in the interests of justice the lawsuit should be dismissed based upon Mitchell's motion to dismiss under Rule 41(a), Fed. R. Civ. P. It is accordingly

ORDERED that the Plaintiff's motion for voluntary dismissal of his lawsuit (docket no. 9) is GRANTED and that the above-styled civil action be and hereby is DISMISSED without prejudice on the motion of the Relator. It is further

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

So ORDERED and SIGNED this 24th day of August, 2009.

A handwritten signature in black ink, appearing to read "LEONARD DAVIS".

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**